IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil Action No. 83-2864(SA)

ANTONIO CIPOLLONE, individually, and as Executor of the Estate of Rose D. Cipollone,

Plaintiff,

-vs-

LIGGETT GROUP, INC., a Delaware Corporation; PHILIP MORRIS, INCORPORATED, a Virginia Corporation; and LOEW'S THEATRES, INC., a New York Corporation,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Newark, New Jersey

April 15, 1988
AFTERNOON SESSION

B E F O R E:

HONORABLE H. LEE SAROKIN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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-and-
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Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

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A P P E A R A N C E S: (Continued)

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next witness, Dr. Harold Kassarjian.

THE CLERK: Step up on the stand.

Left hand on the Bible.

DR. HAROLD H. KASSARJIAN, having been duly sworn, testified as follows:

THE CLERK: Be seated. State your name and spell your last name.

THE WITNESS: Harold H. Kassarjian.

DIRECT EXAMINATION

BY MR. BLEAKLEY:

Q Dr. Kassarjian, where do you live?

A In Los Angeles.

Q And what do you do for a living?

A I'm a professor. I do research and teach at the University of California at Los Angeles.

Q What is the full title that you hold at U.C.L.A., that school known to a lot of us as U.C.L.A.

A Right.

Q What is your full title at U.C.L.A.?

A Professor in the graduate school of management at U.C.L.A.

Q Is it a professor -- does it have any particular title

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with it?

A Professor of management, professor of marketing.

Q And the school is the school of what?

A The graduate school of management.

Q Graduate school of management?

A Yes.

Q Do you hold any administrative positions in that school?

A Right now, no.

I have been the vice chairman of the department of management, that is the whole department of 85, 90 people and I have been the chairman of the marketing area, which is about ten, 11 people plus some part-time people.

Q How many full-time and part-time instructors or professors are there in the graduate school?

A I'm not sure, but I would guess somewhere between 95 and 105.

Q And how many students are in the school?

A We have no undergraduate students. It's only a graduate school. That is, only masters and doctorate students.

We have about 850 master students and 150 to 175 Ph.D. students, so that's about a thousand?

Q How long have you been a professor at U.C.L.A.?

A Since -- well, I started at U.C.L.A. as an assistant professor in 1961.

In 1960 something I became an associate professor

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and in '71 or '72 I became a full professor.

Q And when did you become -- during what period of time were you the chairman of the marketing department or area?

A Oh, on my vitae --

Q Do you have a copy of that in front of you?

A I have it in my briefcase, which I left back there because I figured if I brought it here, someone would yell at me.

MR. BLEAKLEY: May the jury open the binder? The only thing there is Dr. Kassarjian's vitae and blank pages for notes.

THE COURT: The jury may turn to it.

A I was in that role twice.

It's right at the first page under employment, 1961, so I was the chairman of the marketing area from '73 to '74 and then again from '82 to '84.

I was vice chairman of the department of management, which is the whole school from '71 to '72, and from '81 to '82.

I quit in '82 because I took on the editorship of the major journal in our field and quit the administrative position.

Q Which journal is that?

A Journal of Consumer Research.

Q Are you currently teaching, Dr. Kassarjian, teaching

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courses?

A This quarter not, but I am teaching.

Q What are you doing this quarter other than being here in the courtroom?

A It seems like it's been the whole quarter.

THE COURT: Think how we feel.

THE WITNESS: I can imagine. I can imagine.

A I -- my editorship ended in, officially ended the first of the year, so I took a quarter sabatical leave to catch my breath and do some reading, and most of all to write up some research articles I had been doing and hadn't had a chance to write up.

Q Prior to your going on your sabatical leave, what were the courses that you have most recently taught at U.C.L.A.?

A Consumer behavior, marketing course, beginning marketing course, a marketing law course; but if I'm not careful that's going to give the wrong impression. I'm not a lawyer and I don't teach in the law school.

It's a course introducing a little bit of marketing law to graduate students so that they know when to call an attorney, so they don't do dumb things like meet in hotel rooms and discuss price of products with their competitors.

Q And any other courses that you have been teaching recently?

A Oh, I got them listed. Let me see.

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Recently -- oh, marketing research. I taught the graduate course in consumer behavior and mass communications. That about covers it in the period while I was editing the journal.

Before that I taught advertising courses. I've taught research methodology course and courses of that sort. Basically, it's all in consumer research or consumer research methods or consumer behavior. That's the focus of most of it.

Q Would you describe very briefly for the Court and jury your educational background?

A Yes. I have a bachelors and a masters and doctorate degree in psychology from U.C.L.A. My Ph.D. specialization was in attitude research and mass communications research.

Q You are a psychologist then?

A Yes.

Q Are you licensed any where as a psychologist?

A Yes, in the State of California. I got my license in 1961. I believe that that's good in all the other states or at least most of the other states. I don't know if we have an agreement with all states.

Q You received your Ph.D. I believe you said, in 1960. Is that correct?

A 1960, yes.

Q Would you describe very briefly the various jobs,

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positions, employment that you've had over the years?

A Yes. Right after I finished, I went to a marketing research firm. Actually, an attitude and opinion research firm, giving public opinion, polling. When I first started it was primarily political issues because it was the 1960 election. After that it became marketing problems, media problems. We did studies for the New York Times, we did studies for the Auto Club, for a variety of magazines and things of that sort, and products, junk food I remember, because the stuff was frozen. We had a heck of a time doing research since the damn things would melt in the California heat.

And from there, I went to U.C.L.A., I was hired by the marketing department to teach what later was to become consumer behavior. It was just starting and there were only two or three people in the country teaching such courses and U.C.L.A. found me and offered me a job to introduce that field at U.C.L.A..

Q Did you ever serve in the military?

A Yes, 1953 to '55.

Q Are you a member of any professional organizations?

Let me ask you first, have you ever practiced psychology in the sense that most of us lay people think of psychologists?

A No, I never have, although I'm licensed. I never have,

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but I've done other things while I was at U.C.L.A.

Do you wants me to go through those?

Q Yes.

A I have been a visiting professor several times. I've taken off -- which is one of the new parts of our job, where we can take off and be a visiting professor and I spent a year at Illinois and I spent a year -- some time, part of a year at Penn State and at the Copenhagen School of Business Administration, School of Economics.

Q In Denmark?

A Yes.

I took a year off and worked as a consultant to the commissioners at the Federal Trade Commission, full-time. That was not just a short time thing.

Q I see here on your resume on page one, apparently a visiting professor at the University in Mexico. Is that correct?

A Yes. I spent part of a year at the Instituto Polytechnico, in Mexico City, teaching consumer behavior and research methods.

Q It also says here that you have been a guest lecturer at several dozen university, Government, and industry programs.

What kind of lecturing did you do in those programs?

A Oh, I'll be -- a university -- universities will invite

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me to come and give a paper, just something -- it's -- in fact, several dozen is probably on the low side. I go a lot. Next week I'm going to Columbia, then I'm going up to Stanford a little later. So I am often asked by the major universities to come and present some of my research or sometimes just sit there and comment on other people's research.

Q In the area of consumer behavior?

A Yes.

Q Are you a member of any professional organizations?

A Yes, all the usual ones. I am a member of the American Marketing Association, and the Association For Consumer Research. I have been a member of the American Psychological Association, Western Psychological Association, American Association for Public Opinion Research until a few years ago, a bunch of years ago, American Statistical Society, American Statistical Association, until a few years ago, and so on.

Q Is there a professional association that deals with the area of consumer behavior?

A Yes, Association For Consumer Research.

Q And you're a member of that organization?

A Yes.

Q Have you been a member of that organization for a number of years?

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A Well, I have been -- since the beginning. I help found it.

Q Have you ever served as an officer of any of those organizations?

A Oh, yes. On the Association For Consumer Research was editor of their newsletter and on the executive committee for many, many years, then president in 1977, and then after that I was chairman of the nominations nations committee.

With the American Psychological Association I have been on the executive board and the program chairman of the consumer psychology division.

With the American Association For Public Opinion Research, on the Pacific chapter, west coast end of it, I was president and so on. On the national level, I was a member of their standard methods committee. I did an awful lot of things, just lots of things.

Q I believe you said that you were a member of something called the American Association For Public Opinion Research. Is that correct?

A Yes.

Q Were.

What is that organization?

A That's the professional association for public opinion pollers, Gallup's, Roper's, Crosley's and so on.

Q People who do and are interested in public opinion

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polls?

A Yes. It's the both scholarly and professional association of the polling people.

Q Have you ever received any honors or awards?

A Well, I was a elected as a fellow of the American Psychological Association, which is a small percentage, five ten percent of the population based on my research, my scholarly contribution.

I've also been elected a fellow of the Association For Consumer Research. That's a much smaller group. I think it's only been given seven times. That award has been given seven times and two of those were posthumous, so that one I'm very proud of.

Q Have you ever served on the editorial boards of any publications?

A Oh, gosh, yes. I've had a long period of apprenticeship in that.

Q Would you describe some of the more important ones for the Court and jury?

A Yes. I was the editor -- section editor and a reviewer editorial board of the Journal of Marketing. I have been on the Journal of Consumer Affairs, California Management Review. I was the editor and also on the editorial board, Journal of Advertising, Journal of Applied Psychology, International Journal of Research in Marketing -- it's on

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this list -- the Association For Consumer Research Proceedings and then, of course, the Journal of Consumer Research as an editorial board from its founding day and then editor for the last seven years.

Q The editor or an editor?

A There are two of us.

Q And you currently held that position?

A Until just this year.

Q Until you went on sabbatical leave?

A Yes.

Q I see on page two of your resume that you have been an academic editor for West Publishing Company?

A Yes. West Publishing Company publishes both law books and textbooks.

I was the -- I was their consulting editor for academic books and my job was to help and decide which books to publish and once they decided to publish a book, then to comment and review and make suggestions to the author on how to improve it or what was wrong with it and so on. So the first step was do we publish the book at all or is it a lot of baloney. Once that decision was made, how to improve the book.

Q Have you ever served as a peer reviewer or referee on any of these journals?

A Yes, all of them.

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Q You review other people's proposed publications?
A Yes, all of them.
Q Have you ever published any books or articles in the areas which you're interested in?
A Yes. I have two books and about short of a dozen chapters in books. They're on this thing, if I can -- it's on page four.
Q Yes. Would you look at that and tell the jury -- identify the books you wrote?
A Number two on page four, Perspectives in Consumer Behavior, at the Wharton School. That is a book of original work and reprinted articles, which really started the field. It's a book that helped define the field of consumer behavior.

Soon after this came out, a book by Engel and Blackwell came out, and this -- those two books together fairly well defined the field, what the field was going to be.

Q The field of consumer behavior?
A Yes.

Then the second book, that's gone through three editions and I'm just about finished with the fourth edition. I hope to finish that this quarter.

Q Have any of these books ever been translated in foreign languages and sold and used in other countries?

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A Oh, yes. French and Spanish and I'm not sure Spanish. French -- well, let me look.

Yes, Spanish, too. My goodness. Spanish, French, on the Robertson book and the other one Portuguese, Italian, Japanese and published in India. Unfortunately, I don't know which language that was in but it was published in India.

Q And how many articles have you written?

A Oh, gosh, tons of them. Hey. It goes all the way through to page nine, so it's 50 -- well, more than that, but 57 regular articles, off of which we must subtract 12 books, is it? Off of which we have to subtract 12 books, so 57 minus 12.

Q Any of those articles have anything to do with consumer behavior?

A I believe all of them. I can't imagine I know anything about anything else, but let me look.

It seems to me I've written -- something that was not on consumer behavior and I trying to find it.

I guess it doesn't matter. It had something to do with licensing, the right to compete. Way back in 1963, I wrote an article on licensing of professionals, everything from doctors and lawyers and psychologists to mattress salesmen as to why these people are licensed and its impact.

Q You said that for a time you were with the Federal Trade

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Commission. When was that?

A 1973.

Q And how long were you there?

A Just short of a year.

Q What were the duties and responsibilities that you had when you were at the Federal Trade Commission?

A What they would do -- I had an office and I would sit there and commissioners would come in and attorneys would come in and they would ask me a little bit about what we knew in consumer behavior.

It was the attempt of the commission to bring in knowledge from marketing and consumer behavior into their deliberations.

Before that time it was all legal precedent and in the '70s they became interested, what do we know from the field of science that will help in our deliberations and in our decision making. And so the purpose was to bring in that kind of material.

And then I would help write some of the regulations that would come along.

People would come and ask me what I think of this ad or what I think of that decision. So I was really quite a consultant. You know, I kind of sit there and look terribly smart and say nice things.

Q Apart from the time you spent in Washington at FTC, have

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you served as a consultant for the or on behalf of the Federal Trade Commission?

A I've served as a witness for the Federal Trade Commission and I'm not too sure whether it started just before I got there or after I was there. I served with them for, gosh, they have been calling me for years. They and the Food and Drug Administration, those two outfits particularly, although others also. We talk a bit.

Q Have you ever appeared as an expert witness for the Federal Trade Commission?

A I -- it's a little embarrassing because you are on the other side. You are the guy that was badgering me.

Q Have you ever acted as a consultant to private business?

A Yes, yes. But I have been -- it was more than just the one -- the Teledyne Water Pic case was the one that Arnold and Porter was handling and I was working for the FTC.

Q I remember it well.

A I do, too, now.

But I worked with them for Sears and one or two other cases.

Food and Drug also and then some of the other state attorney generals, but for companies I've worked, too. I've had several of those, yes.

Q Have they all been in the area of consumer behavior?

A Yes.

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Q Have you ever done a content analysis of advertising, Dr. Kassarjian?
A Yes, I have.
Q What is a content analysis?
A What we are trying to do in content analysis, as opposed to a layman reading, is to quantify in a reliable, credible dependable and in a replicable way what is the actual message or messages in advertising, and I want that to be separated from what the intent of the advertiser is, and what the perception of the receiver of that ad is.

So there is really three parts of communication; the communicator and the interpreter and then the content, and so it is not a study of the communicator. Not a study of the receiver or the interpreter or reader, but a study of the actual words, signs and symbols in the ad itself.

Q How many content analysis of advertising would you say you have conducted or participated in?
A Six or seven.
Q Have you reviewed content analysis of advertising that have been done by others in the field?
A Oh, yes. Sooner or later almost everyone writes an article in consumer behavior in marketing on content analysis. Sooner or later I am the one that ends up reviewing the damn thing -- the darn thing.
Q You, in fact, have written an article in content

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analysis?

A Yes. 1977.

In fact, that article is an important one because that introduced content analysis into the field and other people started using content analysis.

Q Have you been described Dr. Kassarjian as one of the fathers of consumer behavior as a field?

A Yeah. But you promised wouldn't say it.

Q I lied.

MR. BLEAKLEY: Your Honor, at this time I tender Dr. Kassarjian as an expert in the field of marketing, consumer behavior and content analysis.

MR. EDELL: No questions, your Honor.

THE COURT: You may proceed and the doctor may be examined as an expert in those fields.

Q Dr. Kassarjian, when were you first approached and retained in this case?

A That is two different questions.

First time I heard of any of the people here was in 1985. Not sure what part of '85, but maybe the spring of '85.

A couple of attorneys walked into my office and asked a whole lot of questions about advertising, and information processing, wanted to know who the important people in the field were, who was doing the research, what

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was it about.

And I don't remember much of that conversation, but talked to them a bit, probably gave them one of my articles because nobody else would read the darn things if I don't hand it to people, and that was the end of 1985. I didn't know what it was all about.

In 1985 -- 1986, probably July -- if I got my years right -- not completely sure -- '86.

Q I think it's 86?

A 1986. Somehow in 1986 I talked to Mr. Silfen.

Q Mr. Silfen -- oops, he is not here.

A Somebody else with him, and I will make a fool of myself because I don't remember which of you people, but one of you suddenly was there, and again they asked a lot of questions about this and that and about advertising, and I had written with Joel Cohen an article on cognitive dissonance and a lot of questions about cognitive dissonance and nothing much happened after that until July of 1987, in July of 87.

I was told there was a case, a trial, and that there was some slim possibility I would be sitting here, and I was given a deposition at that point by Joel Cohen to read, I know I took it with me on vacation and read it during my vacation and then called in -- seemed something happened in August. I am not sure of it. And then again in the fall, maybe October or November, I was called to New

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York to --

Q For a deposition?

A Yes. I don't know what it's called. Engage in a deposition or depose yourself or whatever.

Q Mr. Edell, I believe took your deposition?

A Yeah.

THE WITNESS: Mr. Edell, whatever you did -- did you subpoena me -- you called me to come to New York and answer questions. That is what happened.

Then, the next I heard, -- that was -- next, I heard concerned just recently about this particular trial.

Q When we asked you to come and testify as an expert in the area of consumer behavior?

A Yes.

Q Now, you said that we provided you or you were provided with and I believe we provided you with a copy of the deposition of Dr. Joel Cohen.

Did we also provide you with some other materials back in last August?

A Yeah. Somewhere along that line. Must have been August. That is probably what happened. I got a copy, the first draft of a paper written by Pollay on content analysis of cigarette advertising and went over that.

Q And did you also review the relevant literature during this period of time in the fall and winter?

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A By fall I had not read much more than those two things. I read a few things. I had read some article on women and smoking which wasn't terribly interesting to me. Wasn't relevant to anything I was doing and then there was some kind of an article by Warner or Werner. I looked at it and put it aside. Whatever it was, it wasn't relevant to anything I was interested in, so I put it aside.

So I saw that and it seems to me there was something by -- not sure you gave it to me or just came in the mail -- something by Chalfee. C-h-a-l-f-e-e, some kind of a report about that that I glanced at. I thought that was great fun because it had the history of advertising in it.

Q Did you also read the testimony here at trial of Dr. Joel Cohen?

A Yes.

Q And the testimony given here by Dr. Richard Pollay?

A Yes, I did.

Q Now, when we asked you to -- for your opinions on certain subjects, did we ask you just to rely on Dr. Cohen's testimony and your general expertise in the area?

A Well, I don't think you asked me to rely on anything. I just relied on what I know and what I read.

Q And Dr. Cohen's testimony?

A Cohen's testimony, of course.

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Q Before you were retained by us in this area, had you ever worked or have you worked on any other occasion with the tobacco company?

A No. Nothing to do with tobacco companies.

Q Had you been paid for your time in working with us for preparing for this case?

A Yes, I have.

Q And for preparing for your testimony here at trial?

A Yes. Well, I have not be paid yet but I will be. If you don't I will stick my tongue out at you.

Q What is the rate at which you have been paid?

A $200 an hour.

Q And if you remember, how much have we paid you for your work as a consultant with us up to this point?

A Nine or $10,000 but some of that is airplane -- airfare and a hotel room, so around $10,000, less airfare and hotel.

Q Do you have an estimate of how much additional you will be paid for coming here this week in your testimony?

A Three days, who knows when it will end. That I think will depend on you and Mr. Edell. If I get out of here today, I guess it will be three days, so that is three times 15, 16, -- we need a calculator up here, because I was in the back and noticed Mr. Martin also suffering. Somebody ought to buy a calculator.

THE COURT: Okay.

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Q I promise we will provide one. But somewhere in the neighborhood of three or four thousand additional or five thousand dollars additional, does that sound right?
A Sounds fine.
THE COURT: Objection is sustained. We will get you a calculator.
Q I do not mean to limit you.
Now, you mentioned before -- I asked you about reading Dr. Cohen's trial testimony, do you know him yourself?
A Yes.
Q How long have you known Dr. Cohen?
A At least since he was a graduate student and maybe an undergraduate student. I think he was an undergraduate student at UCLA, but he was my student as graduate student and I was his advisor and we spent many, many hours yelling during his dissertation.
I don't know if you know what -- if you people are familiar with what it takes to be a doctor and students. You work quite closely with a professor kind of like an apprenticeship, and I spent a lot of time with him.
Q Have you kept in touch with Dr. Cohen over the years?
A Yes, we are dear friends.
Q Have you talked with him about the case?
A No. We both know the other person is on it, and we are

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pretty conscious not to talk about it, because if we do, I am not sure what, but I expect dreadful things will happen to both of us.

Q Let me ask you, Dr. Kassarjian, if you would, to describe briefly for the Court and jury what exactly the study of consumer behavior involves?

A It is a sub-set of human behavior. It is what we are interested in is human behavior, but not hypothesis and not schizophrenia, but human behavior in the marketplace.

So that it is the study of the human behavior in the marketplace attitudes about products, but not necessarily attitudes about politicians, reactions to the mass media, that type of thing. Human behavior.

Q Is it fair to say it involves trying to understand why people buy and don't buy things?

A I don't like to use the word "buy" because very little of our work is actually buying. Attitude change, opinions do and buying too. I don't want to deny buying.

Since a lot of our research is on college students and, you know, you really can't ask them why they are buying refrigerators, it isn't as much bias impact of human behavior. Much is psychology.

As you know, studies most of college sophomores -- what we know about that is mostly college sophomores and what we know about consumer behavior is not as balanced as

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interight but close.

Q There is a difference between consumer behavior and consumer research?

A No, just whether you are trying to show yourself off as a researcher or behavior type.

Q How is consumer behavior or consumer research, how is it used?

A How is it used? Ends up in stuffy, scholarly magazines. We write to each other. Read each other's work and complain to each other.

I don't -- surely, my work, I know I don't know how it's used.

Q Do businesses try to make use of consumer research?

A If they do, I am afraid they are going to be rather disappointed because you know there isn't -- good solid research at this point doesn't have that much applicability, if it is a scholarly field and I don't know if -- I don't interact much with business, don't know if they use it.

Q How old is consumer behavior as a discipline or field of study?

A I suppose like everything else it all goes back to Aristotle, but in fact it is as a field, as a term it is in the mid 1960's, maybe late 1950's. Want me to tell you quickly the history?

Q Certainly.

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A Basically just about the war time, about war time, a president, the president of Columbia Broadcasting System became interested in audience and radio research. Did some wonderful studies with a couple of people at Princeton and about that time Dr. Lazarsfeld left his professorship at Northwestern and started the Gallup poll and Crossley (phonetic) started it and Roper, so there was public opinion polling starting. And Stanton brought over Paul Lazarsfeld from the University of Vienna, and Lazarsfeld, in turn, brought over two of his students, Herzog and Ernst Dicker. And the Ernst Dicker Herzog group, that started the whole notive of research.

The problem with motivation research they were using a lot of techniques of psychoanalysis. What they had learned from Freudian theory about, egos and putting people on cultures, and they brought those theories here and tried to do marketing research and, in fact, it was terrible science.

And in reaction to those, those who have been better trained in the scientific method started the field of consumer research or consumer behavior. That really emerged out of that motivation research.

Now, you -- I ran across it and say motivation research studies. If you would like to see one of those are like -- I don't remember the title -- it's Harpian,

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marketing planning in the mid-1960's, 1965, '66, '67. There is an article that Dr. Cohen introduced and so you can get a feeling of what these people were dealing with in order to talk to a few people like you who --

(Interruption.)

A Yes. In relation to that kind of, not science -- these interpretation, the scientific field of consumer behavior, emerged as a scientific discipline.

Q Let me ask you, you referred to one of the gentlemen who was a founder of the field, Dr. Paul Lazzerfeld?

A Not a founder of the field. He was one of the procurers of the field.

Q Is that the same Dr. Lazzerfeld that Dr. Martin referred to him?

A He mentioned Paul Lazzerfeld, if it's the same one as -- yes, he is shaking his head. It is the same.

Q When was the association for consumer research founded?

A Yes. We first met at a American Marketing Association meeting in '69 at Ohio State University with -- in attendance were myself and Cohen and Engel and Blackwell and a bunch of other people and decided that the time had come to formalize the field, and so 1970 was the first meeting, and then it grew, so now it is about 12 or 1300 people in about 20 different countries.

MR. SOELL: I missed the name.

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A Association for Consumer Research.

Q And the Journal of Consumer Research, when was that founded?

A That was founded in 1972, but the very first issue came out in June of 1974.

Q Does the field of consumer behavior concern itself with the behavior of individual consumers as opposed to groups of consumers?

A No. It is not an individual field. Individual field, that is the work of psychiatrists and clinical psychologists. We are concerned about the consumer in general, the average consumer. I don't want to say groups of consumers because then we have to define what groups. But it is in general. Not the individual. We don't do predictions on the individual. We don't talk about individuals.

Q Do experts in the field of consumer behavior study specific individuals?

A No, sir.

Q And their conduct?

A No. That is not our interest. Not our field. That is somebody's else's business.

Q Do they express opinions about the specific behavior of specific named individuals?

A Never happened.

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Q Is there any disagreement among people who specialize in consumer behavior about that subject, whether or not it deals with individuals or groups?

A No. I can't -- no.

Q Are you aware of any literature or studies that have been conducted in the area of consumer behavior that demonstrate the applicability of the principles of consumer behavior to specific individuals?

A No. It would never do it. I would never predict what a person is going to do because a person is much too complex. No.

Q Now, you testified earlier this afternoon about content analysis and I believe you testified a little bit about why content analysis is done. Are content analysis of advertising used to predict the behavior of specified individuals?

A No. Content analysis has nothing to do with individuals. Content analysis is the study for the actual signs and symbols. The actual message in the ad itself, not related to the intent of the communicator nor the interpretation or the effects on the, what I call the interpreter. We can always make hypothesis.

We can say, if you said there say 60, you wanted to say there because of that, if you read this, maybe the way -- the average consumer will react this way. It does

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not stay that way -- they are hypothetical situations or assumptions.

All the studies is the science and symbols in the message itself. It can be replaced -- judges, for example, can be replaced by a computer, and then there is no judgment at all.

Q Does a content analysis permit one to measure consumer or public awareness on a subject?

A Public awareness, no. Awareness is an individual variable.

Content analysis can only tell you what is there. It cannot tell you what somebody saw. It's not measuring people. It's only measuring what's there. It's a counting, it's a counting of what's really, really there.

Q Does content analysis tell you anything about how consumers perceive or interpret an advertisement?

A It's got nothing to do with the individual. It's -- it only measures what's there. It's not a study of people. It's a study of signs and symbols, picture and words.

Q Does content analysis tell you any information about an individual consumer?

A It gives you no inclination about individuals. It's not designed to study individuals.

Q You mentioned a work you did with Dr. Cohen on something you described as cognitive dissonance.

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Do you remember that?

A Oh, yes.

Q What exactly is cognitive dissonance?

A It's a theory in social psychology that basically hypothesizes or theorizes that individuals strive to be consistent in their thoughts and ideas and values and beliefs, that we try to be consistent.

It's an interesting idea and when Professor Cohen was a student and I was just beginning as an assistant professor we thought it would make a very interesting article if he would introduce cognitive dissonance and social psychology into the management literature and we did that. We wrote an article and what we did is we were -- I was teaching a class and Professor Cohen was my research assistant, teaching assistant.

And it was a class in research methodology and we taught people how to draw a sample and write a questionnaire and we taught them how to do the interviewing. And the students wrote up the interview, wrote up a sample and, of course, it can't be a sample of the United States for a classroom project, so we took a little community around Los Angeles called Santa Monica. They do a nice sample of Santa Monica, brought the data in and after the semester ended, Joel Cohen and I then, maybe he, maybe me, one of us processed the data and then we both wrote the article up.

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And introducing cognitive dissonance we used the results of that study to make our point, to prove our point.

Now, that was in 1964 and right during the class, a very interesting thing happened. The Surgeon General's Report came out on smoking and health and so that was a wonderful vehicle for us to test some of these cognitive dissonance theories out. So we used people's reactions to the Surgeon General's report on smoking and health as the vehicle to discuss cognitive dissonance to write the article. Twenty-five years later because of that article I'm here.

Q What, if any, conclusions did you and Dr. Cohen reach in the article you wrote on cognitive dissonance?

A We felt that cognitive dissonance is one of the many viable theories that had relevance to management. I can't say consumer behavior because that term hadn't emerged yet. But if I been writing that article today, I would have said had relevance, one of the many points would be relevance to consumer behavior but then we said between management and marketing.

Q Is cognitive dissonance an accepted theory of consumer behavior today in 1983?

A It's a theory, yeah. It gets, see, cited, it goes in a textbook. It's one of the used ways of looking at the consumer and it's one of the theories that's there.

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Q Are there other theories?

A Yeah, lots of theories.

Q Are there theories that are inconsistent with the theory of cognitive dissonance?

A Yes. Learning theory is inconsistent with it. In fact, Professor Cohen has an article in which he pits learning theory and cognitive dissonance. I worked with him when we were at Illinois on that project, along with Joel Goldberg, not Joel Goldberg, somebody Goldberg. He's a friend of mine and he's going to read this and I'm in trouble. Marvin Goldberg.

Get that down, please.

Q And pitting cognitive dissonance and pitting learning theory together -- which one's right?

A In that study, some of the dissonance theories began to fall apart and the learning theories held up better, but that doesn't disprove dissonance.

I didn't write that article up. I was there while they were doing it and I participated in it and I got out of there. I just pulled out of it and went back, so I can't tell you much about it.

I think that article was published in the early, early '70s or late '60s and I haven't looked at it since.

Q What is dissonance?

A Dissonance merely means that if the people strive to be

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consistent and that if there is an inconsistency within us, we try to reduce the inconsistency because we want to be consistent. That's a...

If you believe that a college education is a good thing and you have a bright child, you would want your child to go to college. That's consistent.

If you believe that college education is a good thing and you have a bright child and you don't want him to go to college, that's inconsistent. That doesn't make any sense. That's all.

Q Is there anything unusual about an individual experiencing dissonance?

A Well, there is one set of -- Festet, who developed the theory in the first place, felt if a state of dissonance is an uncomfortable state, that you try to reduce. It's a motivating state.

Later writers, within four or five years, a lot of writers came out and objected to that motivational. If you're dissonant, you're going to do something about it to reduce. That's controversial but it's mattering among scholars.

Q Is cognitive dissonance a controversial theory?

A It's not important enough to be controversial. It's another theory in the field and 20 years ago it was great fun, 25 years ago people talked about it. But nowadays you

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just -- no one wanted to article on dissonance way back. Maybe someone will, and it will come back in but right now there isn't much out there on it.

Q Dr. Weinstein, have you made decisions in connection with your work in advertising on consumer behavior?

A Well, I've thought a lot about it, yes.

Q And do you have an opinion concerning the impact that advertising has on consumer behavior?

A Well, consumer behavior is affected by many, many things. Advertising is one of those. Various studies in the last eight years indicate that it's not the most important, but it does affect behavior to a lesser extent, a lesser influence.

For example, in a family where a child will -- may not get what they want as the sole argument that advertising -- that is too often assumed and it shouldn't.

So I don't want to say infinite variety, but a very, very great variety of forces or vectors that are acting on the individual and these include all of the mass media, including advertising, but include personality traits, the individual's personality and his own values and beliefs, personal values.

We also find, for example, that among new people starting a new home, the most influential factor or force on what choices it what are being made. So it seems that the wife, then the young boy or the young man appears to be the least

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apartment buys Tide soap. So the family becomes critically important.

Other people become critically important, enormous effect of peer groups. Sorority sisters have a very powerful effect on college students on how to dress and behave, even to think and vote.

Q How important, in your opinion, is advertising in its impact on consumer behavior?

A It's one of the vectors. How important? It's there. It's not very important, but nothing is very important. All of it together is important.

Q You were here this morning when Dr. Martin was testifying, weren't you?

A Yes.

Q Do you remember Mr. Buell asking Dr. Martin about zeitgeist?

A Yes.

Q Do you know what zeitgeist means?

A Yes.

Q What does it mean?

A Zeitgeist is a German term. It comes from psychology. It was used a lot in the '20s and '30s in psychology and what it means is the spirit of the times.

We've all been struggling with things and I read here and talking about the time, the influence and just

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Cohen introduced the term "information environment."

I noticed even his Honor used that term today, which was kind of introduced to grab the --

Q Zeitgeist or information environment?

A Pardon?

It was part of the information.

MR. BLEAKLEY: That was a joke.

A I have always felt, not always felt, I just heard the term out that term doesn't quite grasp the full implication of it because not only is it information that's important, it's the times, it's the era, it's what other people think and what people are doing and so on.

So I went back to my psychology and came up with a term, not for this. I used it in a class. Zeitgeist, meaning the spirit of the times, the era, the times and so it's a word I've invented in place of information environment.

And I would appreciate very much if you use it. I mean, if Joel's going to get three months, I want three months.

Q Does the advertising for a product create the zeitgeist which the product is sold?

A Oh, no, no, no. Nothing creates the zeitgeist. It's there. All of it creates it. It's everything. It's the advertising, it's the times, it's everything.

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If advertising had that kind power to change the times, to make skirts shorter, think of the money that could be made. Advertising reflects it. Advertising is part of it.

I don't want to deny advertising a role. Of course it has a role. Everything has a role. Movies have a role. Television has a powerful role and family and children and groups and sororities and associations and everything we do feed into the times.

Can I tie it into smoking or not?

MR. BLEAKLEY: I was about to ask for our afternoon.

THE COURT: We'll take it and resume at ten of four.

All rise for the jury, please.

(Recess.)

THE CLERK: All rise.

(Jury present.)

THE COURT: Please be seated.

THE WITNESS: Sit down?

THE COURT: Yes, please.

THE WITNESS: Excuse me. Do you want it back?

MR. BLEAKLEY: You can keep it there unless it is in the way.

THE WITNESS: I got all blank pages.

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DIRECT EXAMINATION BY MR. BLEAKLEY:

Q Dr. Kassarjian, earlier in your testimony, I asked you about whether there were theories other than the theory of cognitive dissonance and you mentioned the learning theory?

A Yes.

Q Are there other theories of learning that are different than cognitive dissonance?

A Many theories. Learning theory, for example, there is a classic one called Pavolv's dog, the salivating dog, and instrumental conditioning, and there are a few other learning theories. From the social-psychological end in addition to cognitive dissonance, there are certainly other balance theories, middle range ones like attribution had an important impact from the psychological theories, Freudian theory had its impact. Some of the neo-Freudians like Carol Hornie has been used. Sullivan was used.

So many of the theories that appear in psychology of -- kind of seep into consumer behavior. Also material from sociology, much of the material on new product introduction, and product life cycle, a lot of that sociological thinking.

We have gotten very recently now, literally in the last year-and-a-half. We are getting important theories coming in--

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Q Any one of these theories clearly the right one?
A None of them are the right one. We are always looking for the right theory. Usually the one I like the most is the right one, but --
Q The right one?
A Yeah.
Q But is there any reliable way, Dr. Kassarjian, to measure the impact of advertising on consumer behavior?
A There have been a number of attempts at measuring the impact but they all have problems.

I don't think there is any valid reliable way to measure the impact. We don't have it yet. Every marketing of the search agency comes up were some new model, new technique that they can do a better job and it just isn't there. We don't have it yet.

Q Is there any valid way, to your knowledge or opinion, that you can measure the effects of advertising on sales?
A The econometric method which have not worked very well because there are too many intervening variables, I don't know of any way where you can measure the impact of advertising on sales.

There is a very famous saying that Gimbel's or Bloomingdale's used to say, half of my advertising dollars are wasted, I just don't know which half.

That probably holds up to this, probably 20 percent

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is wasted. I just don't know what 90 percent.

Q You did read Dr. Cohen's trial testimony in this case?

A Yes, I did.

Q And did you read Dr. Cohen's testimony in which he expressed the opinion that Mrs. Cipollone did not have an adequate understanding of the health hazards of smoking prior to 1966?

A Yes, I did.

Q In your opinion as an expert in consumer behavior, is the expression of an opinion like that, within your discipline, is it something that people in your profession are trained and have the experience and the expertise to do?

A No.

Q And would you explain to the Court and jury why you believe that?

A We just don't study the individual. That is the field of clinical psychology and psychiatry. All of our data, all of our studies are on groups of people, are on masses of people, not on single individuals. It is not a discipline of the single individual. We are just not -- we don't do it. Not trained in it not interested in it.

Q You know that Dr. Cohen read the deposition testimony of Mrs. Cipollone?

A Yes.

Q In your opinion, does reading the deposition testimony

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Q In your conclusion on Page 53 in talking about a committed cigarette smoker, you concluded he has justified its rationale, that being continuing to smoke cigarettes, either by -- can you read it?

A Do. Go ahead. I will find it as you go on.

MR. BLEAKLEY: Confirmed smoker.

MR. EDELL: Confirmed smoker is it? Right over here.

A He has justified its rationality.

Q Read it so the jury can hear it.

Maybe if you want to read the highlighted portion, it will be easier.

A If it makes sense -- it is in the middle. I will start here.

He has justified its rationality either by dissociating his responsibility over the decision, by denying, distorting, misperceiving, or minimizing the degree of health hazard involved and/or by selectively drawing out new cognitions and new information that will reduce the inconsistency of his behavior and achieve consonance in his own cognitive world.

What we have done here is take a lot of words of Festinger and its theory added in our own study, which was smoking, the degree of health hazards involved which does not appear in Festinger's article and repeated it.

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of Mrs. Cipollone provide a basis for expressing that kind of an opinion?

A No. I am afraid Professor Cohen went out on a limb a little bit because the deposition is fine. What an individual says 24 hours or 24 years or 40 years after something happened is a piece of information, but you can't make reliable claims and reliable statements on what somebody said what they remember from 40 years ago. You just can't.

Q You read the content analysis that was performed by Dr. Richard Pollay, is that right?

A Yes.

Q And you read Dr. Cohen's testimony in which he referred to the content analysis done by Dr. Pollay?

A Yes.

Q In your opinion, does the content analysis that was performed by Dr. Pollay provide a basis for expressing an opinion about the understanding that Rose Cipollone had of the health hazards of smoking prior to 1966?

A As a single individual, Rose Cipollone that individual, that is who you mean, the answer is no.

Q Why is that?

A Content analysis -- well, content analysis will tell you in advertising in that study he did a study of advertising and told us what the advertising contents signs and symbols

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were like over a period of years.

But there are many other things that go into the information environment of the individual, and that is just part of it, and content analysis by itself tells you nothing on how people will react or what people know.

It does not measure people. It is not on a measure of individuals or groups. It is a measure of advertising, period, end.

Q Dr. Cohen testified that consumer behavior addresses the behavior of individual consumers in the sense that consumers don't bias groups.

Do you agree with that?

A I don't disagree with it. What he meant to say, what he is saying is, that consumer behavior studies at the individual level as compared to the aggregate level. When we are doing a study on say trying to compare advertising sales -- advertising dollars with sales, there are no individuals involved in that. You find out how many dollars were spent, how many units were sold and try to use some kind of a correlation.

What consumer behavior does, it will take a sample of people, 500 people, ask a bunch of questions and from that industry to generalize the population on how consumers behave.

So it is dealing with bunches of people but it is

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dealing with people and not with plain raw numbers. So in a way, he is not wrong. It is about individuals but it is not about single individuals.

Q You mean a specific name identified individual?

A Right, right.

Q Did you read Dr. Cohen's trial testimony in which he expressed the opinion that Mrs. Cipollone would have tried a palladium nitrate cigarette?

A Yes.

Q Do you have an opinion based on your expertise in the area of consumer behavior as to whether a consumer behaviorist can predict what an individual consumer will do?

A We cannot predict what the individual consumer will do. There is no way of knowing whether Mrs. Cipollone would have smoked a palladium cigarette. We don't know it. We don't know how it would taste. We don't know what the advertising will be like. We don't know what free samples she would have been given.

Don't know what it would have cost. Don't know what the promotion would be. We don't know how it would be presented, whether it would even be available on the shelves. We just don't know anything, and then to make a prediction, she would have tried it without all of that information is impossible and with all of it, it's doubtful.

MR. BLEAKLEY: No further questions, your Honor.

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THE COURT: Cross-examine.

MR. EDELL: I hardly had time to get ready.

CROSS-EXAMINATION

BY MR. EDELL:

Q Professor, I wanted to talk about my favorite article.

Remember this one. You want to tell the jury about that?

A Go ahead.

Q That is okay. That is an inside joke.

A I don't think that those attorneys know of that one either.

Q I read it with every interest though.

The paper that you referred to that you wrote with Joel Cohen is what we marked as P-9461, I will give you a copy of it.

I thought I was going to give you a copy of it.

MR. EDELL: Where are your copies of the papers?

A Each time I Xerox that article I only get the odd number pages. Please make sure you have the even numbers ones too.

Q Think I have them all.

MR. EDELL: Do you have a copy of the paper, Mr. Bleakley?

MR. BLEAKLEY: Yes.

Q Now, am I correct, sir, that Professor Cohen wrote this

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while he was a Ph.D. candidate under your direction?
A No. We both wrote it together. My name comes first. That either means I had more rank than him or I did more work. I don't remember which but one or the other of those.
Q And there were a number of hypothesis that you posed during the course of your study with Professor Cohen on the effects of information and how people who are smokers receive and process that information concerning the health hazards of cigarette smoking. Correct?
A Well, I guess what we did was to take some of the parts of cognitive dissonance theory, some of the claims and write them up, so they look like hypothesis to try to test the hypothesis of cognitive dissonance and to do that we collected data from our students on smoking behavior, yes.
Q And you concluded that the more a person smokes the less he believes that cigarettes cause lung cancer, isn't that correct?
A Yes. We made that statement in here. It comes out of one of the tables. Should, at least.
Q I believe it is on page 60, sir?
A Yes. That would have been one of the hypothesis that cognitive dissonance made and we corrected some data and in 1964, we were able to show that, you know, the percentages are not very much. But that is the statement we made and there is some data for it.

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Q In your conclusion on Page 63 in talking about a committed cigarette smoker, you concluded he has justified its rationale, that being continuing to smoke cigarettes, either by -- can you read it?

A No. Go ahead. I will find it as you go on.

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We are trying to show what cognitive dissonance is and we had a neat little vehicle in this tiny representative little study that our students collected data and were trying to show what dissonance was, it was all about dissonance.

Q What you concluded basically in this case is somebody who is a confirmed smoker might seek out information that would be consistent with his belief that cigarette smoking hadn't been proven to cause lung cancer, is that correct?

A That is what the theory would prove. I hadn't drawn that conclusion -- I think you drew that conclusion from the data.

It's a perfectly reasonable conclusion because Festinger would have concluded that the question is whether you can say that about the average consumer from these data and go ahead. I mean if you think that the weirdos living in Santa Monica, California are average of the United States, God help us.

Q What I am trying to find out, that might explain why somebody who was a confirmed smoker would, as you put it seek out information or articles in a newspaper which would say, for example, it hasn't been proven that cigarette smoking causes lung cancer, and they would tend to believe that because it is consistent with their cigarette smoking?

A I see what you are saying. That is possible.

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More likely, though, when you got necessary kind of information, and we pretty well at that point believed for whatever inforamation we had that the entire sample realized or had heard of the Surgeon General's Report and realized that cigarette smoking is quite dangerous. We had -- whatever the reason was, we had reason to believe it, otherwise there would be no dissonance.

You must believe the product is dangerous otherwise there is no dissonance if you are smoking it. So we automatically assumed everybody believed it was dangerous.

How does that person behave -- from what you are saying, when you got a person that has information from the Surgeon General or reliable sources of that sort, that the product is dangerous, what would you expect then the company, the manufacturer to say?

You would expect the manufacturer to say, the product is not dangerous, so therefore it is not equal.

When you got this kind of conflict that you are talking about, the two forces, two vectors are not equal. It's dangerous coming from one end and then you're implying that cigarette ads or cigarette information saying it's not dangerous or the other end, but it's so powerful on one side I don't see a problem.

Q If you take a look at table four, is that on page 60, sir?

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A Yes.

Q And you have statistics, for example, for heavy smokers. There you indicate that 40.9 percent of heavy smokers believe that it had not been proven that cigarette smoking causes cancer. Is that correct?

A No, no.

Q What is that?

A 40.9 percent of the people we talked to said it's not proven.

But now understand what's occurring here. You got a person, an interviewer that's just recently been trained in a classroom, first experience, going door to door, doing interviewing. First thing they find out if the person is a smoker.

Then they ask these heavy smokers, do you believe that the linkage between lung cancer and cigarette smoking is proven?

Now, I already told you I'm a smoker. If I say to you, yes, I deeply believe that's proven, then I look like an awful fool to some stranger on the door who's not that good an interviewer, so the natural thing is to protect myself at the door and say, I don't want to look like a fool. I am a smoker. I told you that. No, I don't believe it.

That's what happened here.

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Q What you're saying is you know what the person who said, it hasn't been proven that cigarette smoking causes lung cancer really believed about the health hazards. Is that what you're telling us?

A No, no.

Very good. You caught me.

Q I'm not trying to catch you.

A I'm trying to understand.

A It's an alternate hypothesis.

Very good, I like that. One for you.

It's an alternate hypothesis for what really happened. We're talking to people. One possibility is that 40 percent didn't believe it, don't believe it's proven.

Another possibility is they said it isn't proven. We don't know what they really thought. That's the whole point. We don't know. We know what they said.

Q Just so I understand it, professor, you don't know which one of those hypotheses applies in this case?

A I have no way of knowing what they believe. I know what they they said. 40.9 said it's not proven. That's all I know.

Q Now, am I correct, sir, that this paper that you and Professor Cohen wrote back in 19 --

A '64.

Q '64 is still considered by you to be an important work?

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A I consider it important because it was a very important paper in my life. It was my first really big paper and it got re-printed a lot and I like it because it's had a very important part in my life.

It's kind of like your first child and your first child is always handsomer than anybody else's baby.

Q The -- am I correct, sir, that Professor Cohen was primarily responsible for the guts of this paper?

A I don't know that. I don't remember. We should ask him. He was my research assistant. We designed the study together. I don't remember who was the big ucketymuck in coming up with the idea.

I know he wrote some of it, because it sounds like him. I know I wrote some of it because it sounds like me. But now 25 years later, who knows?

Q Let's take a look at February 23, 1988.

A February 23?

Q Sure.

Can you read to the jury what you wrote on February 23, 1988? Right here.

Do you want me to read it?

A No, I don't want you to read this.

This is a letter of recommendation that was -- I wrote on behalf of Joel Cohen looking for a new job. There are ways to write letters of recommendation and we write

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very strong letters of recommendation in this field.

I'll be glad to read it, but I think one must understand that this is extremely embarrassing, both to me and to Joel, wherever you got this, that this should be made public. This is a personal letter of recommendation I wrote on Cohen's behalf. It's a little bit exaggerated, but that's the way letters are exaggerated.

Did I say small suit?

Q No. I don't think you recommended him for the dean's position.

A No, I didn't. I recommended him for a professorship.

If it's okay, if I'm forced to read that letter, I will, but I think that that is personal stuff out of personnel files which is confidential.

Q If you don't want to discuss it, we won't.

But that doesn't refresh your recollection as to this particular paper?

A As to who wrote what? No.

I could have told you if you just asked. I don't want that public because stuff in personnel records are probably confidential.

Q Professor, since the time that you authored this article in 1964 with Professor Cohen, have you conducted any studies to see the effects of cigarette advertising on consumer behavior?

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A No. I'm not interested in cigarette advertising on consumer behavior. I was interested in cognitive dissonance.

Q And have you done any studies to see what effect cigarette advertising has had on the information environment?

A The zeitgeist.

Q The zeitgeist, I forgot to use it.

A What cigarette -- have I done any studies on what cigarette advertising has on the information environment?

Q Yes, sir.

A Was that the question?

Q That is the question.

A I have not done any studies. I've read stuff, if that's doing a study, but I've not collected original empirical data.

Q Now, we discussed the effect of cigarette advertising on the information environment at length and we talked about specifically the success of the tobacco companies on the information environment through their advertising.

Do you remember that?

MR. BLEAKLEY: I don't think Mr. Edell should be characterizing deposition testimony. If he's going to impeach the witness --

THE COURT: Sustained.

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Q Do you remember we discussed the effect of cigarette advertising on the information environment?

A I don't remember. My goodness, we talked for hours or yelled at each other for hours. I'll be darned I remember what I might have said.

Q Do you remember my asking you about certain written comments that you had concerning Professor Cohen's opinions expressed in his deposition or in a report?

A Yes.

Q Do you remember discussing the following statement by Professor Cohen: "If it wasn't for the marketing and advertising of cigarettes, there wouldn't be much of an information environment regarding cigarettes. The tobacco companies were the prime movers"?

Do you remember that, sir?

A I think I remember Cohen saying that. If he wrote, I would have immediately reacted as a -- wait a minute.

MR. BLEAKLEY: What page?

MR. EDELL: Page 142.

A I can't imagine if I read it carefully that I would let him get away with a comment like that.

Q In fact, you responded by indicating if we would give them credit -- if we could give them that kind of credit, they should be billionaires. And you said, well, I guess they are.

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In fact, sir, the cigarette industry is one of the most profitable industries in the United States. Isn't that correct?

A Yes.

Q And --

A Wait a minute.

Isn't that correct? I don't have the vaguest idea whether that's correct. How did you get me to say yes?

Q You don't know?

A I don't know. I would have thought General Motors was the most profitable company in the country but I don't remember -- or Exxon or somebody.

Q Now, the content analysis that you reviewed of Professor Pollay's, you described as a good content analysis?

A It's okay. Yeah. Pollay's work is okay when you compared to some of the -- I was about to say crap, some of the stuff that's out there, it's quite good. It's quite good. It's okay. It's fine. It's all right.

I wouldn't have done it that way. There are a number of things about it that I don't like and I can sit and quibble about a whole series of little problems with it, but comparing it to many of the studies that are done, it's all right. It's okay.

Q It's good?

A It all depends on what interpretation you make of it.

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See, Pollay makes no interpretation. He gives you accounts and he says, I define one -- I have one definition called whatever it was, pure scene. There are X number of pure scenes as of which is Y percent of the total. That's all he says. I can't disagree with that, the way you measure it you got X percent.

Q Professor, isn't it a fact that it was a good content analysis --

A I said that.

I know what you're reading.

Q I'll read it to the jury, if you want.

Do you want me to read it to the jury?

A No.

In context we were picking on this and I said, hey, wait a minute or I intended to say, hey, wait a minute. We're picking on this but it's okay. It's not bad, it's good. It's all right.

Q The thing --

A It's okay.

Q Did you read the cross-examination of the defendants of Professor Pollay on his content analysis?

A You mean Mr. Bleakley's cross-examination --

Q Yes.

A -- of Pollay?

Q Yes.

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A I read it. I don't remember anything.

How embarrassing.

Q Mr. Bleakley was present at the time of your deposition when you described Professor Polley's content analysis as a good content analysis, correct?

A If you want to word it that way, help yourself.

Q Well, was he or wasn't he present, sir?

A No, he was present.

And if you want to keep using the word "good," go ahead, fine. It's okay.

Q Professor, I don't mind a little bit of levity but I would appreciate a response to the question.

Was -- was profess -- was Mr. Bleakley present at the time you made that statement at your deposition? Yes or no, please.

A Yes, yes, yes.

Q Now, at the time of your deposition and the time you've expressed opinions in a written report in this case, you had not reviewed Mrs. Cipollone's deposition?

A No, I had not.

Q And you had not reviewed Professor Polley's deposition transcripts?

A No, I had just seen the report.

Q And you had not reviewed any internal documents of the defendants in this case?

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A No, I would not be interested in internal documents.
Q You saw none of their public relation documents?
A I would have no interest in those.
Q You didn't see the press releases?
A No, I would have no interest in those either.
Q Now, before I forget, on econometric studies, econometric studies are not something that are commonly used in the field of consumer behavior. Is that correct?
A Depends on how you define consumer behavior.
It's not comeonly done among the people who are in the behavior part of the consumer behavior. But we have qualitative colleagues that do studies like this in marketing. And if we want to incorporate them into our field, fine. It depends on where you go, what is consumer behavior and what is aggregate or mass behavior.
Q Sir, do you you consider yourself to be, as Mr. Bleakley described, the father or ascribed the father of consumer research?
You have never conducted an econometric study, have you?
A No, I never have.
Q When Professor Cohen was learning under your tutelage, you didn't instruct him on econometric studies?
A No, to the best of my knowledge he never conducted one either. That's a technical field.

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Q You don't teach your students who specialize, graduate students who specialize in consumer research in econometric studies, do you?

A Oh, yes. I don't, no. But that's part of the course of study. They do take courses in that.

Professor Hansen teaches that at U.C.L.A.

Q But you don't teach that, do you?

A I don't teach that. I don't know enough about it.

Q Now, you told us that when you first were contacted by the defendants or the representatives in this case, it was based upon an inquiry as to what is information retrieval. Is that correct?

A It was many years ago and they asked just a lot of questions about consumer behavior and who the experts were in information processing and --

Q That's right, information processing?

A I don't remember much about it but they asked me a lot of questions about that.

Q Tell the jury, please, what information processing is?

A Information processing in it's very narrowest sense involves such thing as memory, memory retrieval and -- well, memory is the best way to put it.

In its broadest sense it involves anything that's coming in. Most people in the field now call everything information processing, anything that's coming from the

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outside world inside is being jumbled up by the brain they're calling information processing.

Maybe because of my psychological background, I prefer to define the term in its narrowest experimental psychology sense, which is the study of memory and memory factors but my colleagues define it much more broadly.

Q In fact, it's information processing and information retrieval is a new area of research in consumer behavior. Isn't that correct?

A Well, no, not really. It's been around since Betton wrote his dissertation about 1969. And Haines wrote an article just about then, maybe 1970. Haines' book came out in '71, so that was the beginning of it.

The real impetus was in the late '70s and I wrote a paper I know -- well, by 1977 I was beginning to think that that fad had worn off and we were going to go on to new topics. It hung around, I was wrong. It's been around. So in a field that's 25 years old, a topic that's 20 years old is not very new. On the other hand, something that's 20 years old isn't very old.

Q Sir, you're not an expert in the area of information processing, are you?

A I'm not an expert in the area of experimental psychology. Since almost all my colleagues define almost all of consumer behavior as information processing, I guess

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I am.

Q Do you remember my asking you questions and giving this following response, page 124, line seven: "Do you consider yourself to be an expert in information processing?

"ANSWER: No, not an expert"?

A That's what I just said.

Q Then I missed that.

A Did I say something different? I didn't mean to.

Q When these lawyers came to you and asked you who the experts in information processing are, one of the names you gave was Professor Cohen?

A Yes. Also Jim Beckman.

Q And in fact, sir, you don't know whether or not cigarette advertising does or does not have a significant impact on the information environment. Isn't that right?

A That's correct, except that there is an implication to the question. If I can expound on my answer?

Q I just want to know whether or not that statement is correct, sir. Did I -- was I correct in that statement?

A Well, I do know that it's not an important variable. It's a variable, clearly it's a variable. A lot is important is the family.

Q Just so we're clear, the question is: You don't know whether or not cigarette advertising may or may not be a significant part of the information environment?

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A Significant part? I do not believe it is a significant part because there are far more significant variables.

Q Question at page 167, line 15: "Would you agree that cigarette advertising may have had a significant impact on people's behavior?

"ANSWER: I can't disagree. It may have had; it may not have had. That's what you've asked and I'm saying I didn't -- it may or may not have had."

Do you agree?

A That's the same thing I said.

Q You don't know one way or the other?

A It's the word "significant" which I may have not have heard under the tension at the time.

If you make a big deal out of the term "significant impact," that's one thing. If you want to throw that word out, I agree completely. The problem is I don't know exactly what you mean by significant impact. If it means greater than zero, probably yes.

Q You didn't have any problem understanding that at your deposition did you, sir?

MR. BLEAKLEY: Your Honor --

A Who knows.

MR. BLEAKLEY: I have an objection unless Mr. Buell also reads the next question and answer that Dr. Kassarjian gave.

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MR. EDELL: I will look at it.

MR. BLEAKLEY: Bottom of page 167 and the top of 168.

MR. EDELL: 167. I have no problem.

Question: How do we determine it may or may not have had an effect on people's behavior. My opinion is if it had an effect at all, it is a very small vector into the actual effect. There are many things that go into the effect just as Joel said three pages before. One of these is communication and a small part of communications advertising. That I will agree to.

How we convert that to the sentence may or may not have had an effect. Do what you want with it.

That is right, sir?

A Yeah. You see in that phrase, the word significant was left on. That is the only thing I am hung up. On otherwise, it's fine.

Q In fact, for any particular individual you cannot testify as to whether or not it had a significant effect on that particular individual, that is your testimony, correct?

A That is correct. I cannot testify on the effect of advertising on any specific single individual.

Q You told us that the Association for Consumer Research was started in 1970, is that correct?

A Yes.

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Q Was Joel Cohen part of the group that helped organize it?

A He must have been. I don't remember if he was at the 1969 meetings where the concept emerged. That is where Black Law, Engel came out with the concept. But I do -- he must have been there in 1970, so he was surely there en masse when it really started. So the answer is yes, uh-huh.

Q Before I forgot about content analysis or leave content analysis, am I correct that content analysis allows for a reliable, valid and quantitative answer to questions such as: Do certain advertisers engage in the use of certain types of themes, appeals, claims or deceptive practices more than other advertisers or agencies, is that correct?

A I know you are reading that from my article. I know I wrote it. The first part is quite correct. The deceptive practice bothers me just a touch, because deceptive practice can mean how a person perceives it.

If by deceptive practice you mean counting the claims they made and some how eventually knowing which of those claims were inaccurate, then I agree completely.

But if somehow you want to say deception is in the eye of the beholder, content analysis does not measure what is in the eye of the beholder.

Q Content analysis also permits us to ascertain the apparent intent of the advertisement, isn't that correct?

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A Yes. Very important point. That is what I have been trying to say. We can make hypothesis about the apparent intent. We cannot measure intent. We have no idea what intent is but we can make hypothesis about the apparent intent.

If we read Mein Kemp by Adolph Hitler and analyze the phrases in that material we can say at one point that this man seems to have an inherent attempt to conquer the world. I have no idea what Adolph Hitler knew about it, but I can make the claim because he talks about conquering the world 72 times.

Q The same is true with regard to cigarette advertising?

A Content analysis cannot discuss -- the data will not produce information on the intent of the advertiser. All it will do is tell you what the message is.

Q And the apparent intent. Correct?

A You can make assumptions about the apparent intent. We can make assumptions about anything. We can assume the world isn't going to end tomorrow or will end tomorrow. We can do whatever we want.

But there are assumptions about apparent. It is apparent intent, not intent. That word is very important.

Q Sir, getting back to the first statement, do you remember being asked this question and giving the following response? Question --

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MR. BLEAKLEY: Page?

MR. EDELL: Page 10 of his deposition, line 10.

Q Do you recall stating that the methodology of content analysis allows for reliable, valid and quantitative answers to questions, such as, do certain advertisers engage in the use of certain types of themes, appeals, claims or deceptive practices more than other advertisers or agencies?

Answer: Yes.

Question: Do you still believe that is so?

Answer: That is fine the way I defined the terms. I just don't know now you are defining them.

A That is exactly the answer I gave.

Q How do you define deceptive practice?

A That is when people, in my opinion -- when an individual perceives in an ad information that is not correct, not true.

Q Not true or misleading, correct?

A Not true or misleading -- I am not sure what the difference is between a misleading ad and deceptive ad, they are both information that the consumer perceives which is not what is true. Not what is real.

Q I just want to make sure when we say deceptive it can also include in your definition for the purposes of how you can use a content analysis, misleading.

A Content analysis gives misleading advertising -- measure

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of misleading advertising -- I am up the creek. I don't know. I can't think of how one would use content analysis to measure misleading advertising or deceptive advertising.

You really have to talk to the consumer to find out if something is deceptive and yet I know I wrote that, you know, it comes out of my article. So I am in an embarrassing position of saying, I wrote the darn thing and damn if I know what I meant by it.

Q You told us that content analysis could not be used to determine what people's understanding or beliefs were, isn't that correct?

A That is right. That -- you do not measure beliefs with content analysis. You can measure apparent belief. Make guesses about what they believed, just like you can make guesses about intent, but the methodology merely counts words and pictures. It is a counting mechanism. That is all.

Q Do you remember making this statement, analysis of historical document could lead to conclusion about public opinions, consumer values or buyers believe in an earlier era?

A Surely.

Leads to conclusions about. It does not measure those things.

So what I am trying to say, if you really wanted to

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know what public opinion was during the Civil War since we cannot go running out and do a Gallup Poll on the Civil War people anymore, one way is to take diaries, letters to the editor, to take other kinds of information, maybe letters to relatives that have been written, do a content analysis of that, count the number of times they use certain words or say certain things, and from that, try to draw conclusions or assumptions or whatever word -- I can use of what public opinion may have been like during the Civil War. That is exactly how you can use it.

I can't measure public opinion in the Civil War. I can only make assumptions, conclusions, hypothesis about what it was like.

Q Professor, you told us that you cannot predict individual behavior. Is that correct?

A Right.

Q You know of the study, for example, and I read it because it is in Professor Wilke's book and you recommend the book to your students?

A Yes.

Q Professor Wilke talked about a study of breakfast eating habits?

A No. Give me some information.

Q Entitled, "Grits versus Doughnuts," and talked about the eating habits of people in the south and people in the

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northeast.

They found that 50 percent of the people in the south ate meat for breakfast, right?

A Not sure it is right, but fine. It is an example.

What comes next?

Q Only ten percent of the people in the northeast eat meat for breakfast?

A Yes.

Q So we know that 90 percent of the people in the northeast don't eat meat for breakfast?

A Fine.

Q If we take an individual and sit the individual down and we go through a deposition process, we ask them all sorts of questions, where were you born, who were your parents, what do you eat, do you eat carrots, do you eat beans, do you eat meat, the person tells you I don't eat meat for breakfast.

We know the person has lived all his or her life in the northeast. We know for the last 50 years they don't eat meat for breakfast.

Q Is it your testimony that we can't predict to a reasonable degree of probability that tomorrow when that person wakes up and goes down to the breakfast table that they are not going to have meat for breakfast?

A Not predict that in the field of consumer behavior. What we do very well in consumer behavior, we do a super job

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of post-hoc analysis. That is analysis after the events occur.

This study is an analysis of data that was taken that probably said, what did you eat for breakfast today or last month or what do you usually eat. In some ways, although the comparison is terrible, it is all like geology in that an earthquake occurs. After they occur geologists come in, study it thoroughly and say, aha, this is why it occurred.

There was this kind of stress in the early earth. That kind of movement. That happened to this rock and that happened there we had an earthquake.

Yet you ask him to predict the next earthquake and he can't. We are in the same boat.

Tell me some consumer behavior and I will get questions and answers, and I can do a wonderful job of explaining why it happened after it happened.

But if you ask me to predict, I fall flat on my face. We are just not ready for it and geologists are not ready and they are so far advanced from us it is a disaster.

THE COURT: Do you have much more, Mr. Edell?

MR. EDELL: No, your Honor.

THE COURT: Do you want to try to finish?

MR. EDELL: I think I can, if Mr. Bleakley doesn't have much more on redirect.

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MR. BLEAKLEY: Don't have anymore.

THE COURT: Does it raise any problem for the jurors to stay?

A JUROR: Yes.

THE COURT: How soon do you have to leave?

A JUROR: Have to pick up my granddaughter by 5:30.

THE COURT: How long does it take you to get there?

A JUROR: Paramus.

THE COURT: How long?

MR. EDELL: Paramus.

THE COURT: How much time?

A JUROR: Almost an hour.

MR. EDELL: If it takes -- It's 3:30 and if takes almost an hour, I better stop now.

THE COURT: All right.

THE WITNESS: I don't have the vaguest idea what happened.

MR. EDELL: Means we will see you on Monday, sir.

THE WITNESS: Oh.

THE COURT: Members of the jury, I would ask that you be here at quarter of ten on Monday. We might be able to start by quarter of ten, but again no later than ten o'clock.

Remember my usual admonition I have not mentioned lately, about not discussing the case among yourselves or

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with anyone else, and I remind you not to read anything about the case or watch anything on television or listen to the radio.

Have a very nice weekend. I understand it will be cold, but I hope the weather is pleasant.

See you Monday morning.

THE CLERK: All rise.

(Jury excused.)

THE COURT: Have a nice weekend.

Can I see counsel off the record?

(Side bar held off the record.)

(Court adjourned until April 18, 1988.)

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I N D E X

WITNESS	DIRECT	CROSS
CLAUDE MARTIN		
By: Mr. Edell		8286
		8409
By: Mr. Bleakley	8399	
HAROLD KASSARJIAN		
By: Mr. Bleakley	8418	
By: Mr. Edell		8461

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